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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

PRE-MUR: 482

DATE ACTIVATED: January 21, 2009

EPS: 80/TIER: 1

STATUTE OF LIMITATIONS:

December 24, 2008 – June 7, 2009

SOURCE:

RESPONDENT:

Alan B. Fabian

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434(b)

2 U.S.C. § 441b

2 U.S.C. § 441f

11 C.F.R. § 110.4(b)(1)(iii)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

I. INTRODUCTION

This matter

of Alan B. Fabian for apparent violations of the Federal Election

Campaign Act of 1971, as amended ("the Act"). As part of the criminal investigation of

Fabian's scheme of fraudulent financial activities totaling tens of millions of dollars, DOJ

uncovered evidence that Fabian may have violated the Act by transferring \$25,000 to the

American Patriot PAC from Fabian's company Strategic Partners International ("SPI"), in the

names of several individuals. Although the available information indicates that Fabian violated

the Act, we recommend that the Commission open a MUR, dismiss the MUR as a matter of

prosecutorial discretion, and caution Fabian for his conduct.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 The DOJ criminal investigation resulted in Fabian's indictment in November 2007, plea
4 agreement in May 2008, and sentencing in October 2008. He pleaded guilty to mail fraud and
5 filing a false tax return as part of a scheme to defraud his former employer, Maximus, Inc., an
6 equipment leasing broker, and several financial institutions of approximately \$40 million
7 between 2001 and 2007. Fabian is currently serving a nine-year sentence at Lewisburg Federal
8 Penitentiary and filed for bankruptcy in December 2008. As part of his plea agreement, Fabian
9 agreed to forfeit his interest in his home, several other properties, and multiple companies.

10 A small part of Fabian's scheme – not a part of his guilty plea – included campaign
11 finance violations, which are set forth on page 16 of the Government's Sentencing
12 Memorandum. According to the Memorandum, Fabian founded American Patriot PAC in
13 December 2003. In July 2004, while serving as the PAC's treasurer, he filed a disclosure report
14 with the Commission covering the period of December 16, 2003, through June 30, 2004. The
15 report stated that the PAC had received \$36,000 in contributions, including \$10,000 from
16 himself, \$6,000 from his wife, Jaqueline Richards-Fabian, and \$5,000 each from four other
17 individuals: Mike Kennedy, John Gaffigan, Cheryl Spencer, and Lynn Farrow.¹ Fabian reported
18 \$25,000 of the contributions as received on June 7, 2004, comprised of \$5,000 from Fabian and
19 the contributions from Kennedy, Gaffigan, Spencer, and Farrow. However, the only funds
20 deposited into the American Patriot PAC bank account around this time were a \$30,000 transfer
21 on June 7, 2004, from the corporate account of SPI, a company Fabian used for his other
22 fraudulent financial activities. Therefore, it appears American Patriot PAC did not receive

¹ These four individuals were referenced by their initials in the Sentencing Memorandum. Their names were spelled out in the PAC's report.

1 \$25,000 in individual contributions, but rather received fraudulently derived corporate funds
2 from SPI. The [redacted] materials contain no further information regarding these contributions or
3 these individuals, and [redacted] personnel were unable to provide additional information in response
4 to our request.

5 We sent pre-RTB notification letters to Fabian, Kennedy, Gaffigan, Spencer, and Farrow,
6 advising them of the Commission's information regarding Fabian's use of SPI funds to make
7 contributions in the names of others to American Patriot PAC; the Act's prohibition against
8 using, or permitting one's name to be used, to effect the contribution of another person; and
9 inviting them to respond. Fabian provided a response stating that the \$30,000 transferred from
10 SPI to the PAC was returned to SPI and replaced with personal contributions. Fabian Response
11 at 1. The limited available information does not support Fabian's claim that the SPI funds were
12 replaced with personal contributions, nor would the replacement vitiate any potential violation of
13 the Act. Fabian also asserted that the SPI bankruptcy proceedings resulted in the Republican
14 National Committee returning \$25,000, "which the \$30,000 contribution funded."² *Id.* The
15 public record does not indicate that American Patriot PAC made a contribution to the Republican
16 National Committee; however, American Patriot PAC's 2004 October Quarterly Report
17 disclosed a \$25,000 contribution to the National Republican Congressional Committee
18 ("NRCC") on July 16, 2004. In July 2006, the NRCC reportedly reached a settlement to return
19 \$25,000 in SPI's bankruptcy proceedings. See Rachel Sams, *Nonprofit Exec Fabian Dogged by*
20 *Legal Disputes, Bankruptcy Case*, Baltimore Business Journal, August 24, 2007. On August 1,
21 2006, the NRCC disclosed a \$25,000 disbursement to Zvi Guttman, the SPI bankruptcy trustee.

² Fabian's response also included unrelated allegations about the 2006 Michael Steele for Senate committee. We provided Fabian with information about the procedures for filing a complaint with the Commission.

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1 Only one of the named contributors, Lynn Farrow, responded to the notification letter. In
2 a telephone conversation with this Office, she stated that she did not remember making the
3 \$5,000 contribution to American Patriot PAC and maintained that she had no involvement with
4 the contributions.

5 **B. Legal Analysis**

6 Fabian's use of corporate funds to make contributions involves several potential
7 violations of the Act. First, the Act provides that no person shall make a contribution in the
8 name of another person or knowingly permit his or her name to be used to effect a contribution
9 in the name of another. 2 U.S.C. § 441f. This prohibition extends to knowingly assisting
10 another person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).
11 The Act further provides that a political committee cannot knowingly accept a contribution made
12 by one person in the name of another person. 2 U.S.C. § 441f.

13 Second, the Act prohibits corporations from making contributions in connection with
14 federal elections, and prohibits corporate officers from consenting to such contributions.
15 2 U.S.C. § 441b. The Act also prohibits any political committee from knowingly accepting or
16 receiving any prohibited corporate contribution. *Id.* The Act also addresses violations that are
17 knowing and willful. A knowing and willful violation may be established "by proof that the
18 defendant acted deliberately and with knowledge" that an action was unlawful. *United States v.*
19 *Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). In *Hopkins*, the court found that an inference of a
20 knowing and willful violation could be drawn "from the defendants' elaborate scheme for
21 disguising their . . . political contributions." *Id.* at 214-15.

22 The available information indicates that that the source of the \$25,000 in individual
23 contributions reported received by American Patriot PAC on June 7, 2004, was actually SPI

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1 funds transferred by Fabian rather than the individuals Fabian disclosed on the PAC's report.
2 Fabian served as the PAC's treasurer and likely knew of the Act's prohibitions. Thus, it appears
3 that Fabian knowingly and willfully violated 2 U.S.C. § 441f by knowingly assisting SPI in
4 making contributions in the names of himself, Mike Kennedy, John Gaffigan, Cheryl Spencer,
5 and Lynn Farrow. It further appears that Fabian consented to, as a corporate officer of SPI, and
6 accepted, as the PAC's treasurer, prohibited corporate contributions in knowing and willful
7 violation of 2 U.S.C. § 441b.

8 We do not have any information that the conduits, other than Fabian himself, knowingly
9 permitted Fabian to use their names as contributors. See 2 U.S.C. § 441f. Because the available
10 information does not suggest that any of the four individuals were involved in the scheme, we
11 make no recommendations as to Mike Kennedy, John Gaffigan, Cheryl Spencer, and Lynn
12 Farrow.

13 Finally, Fabian violated the Act when he made false statements in American Patriot
14 PAC's disclosure reports. As treasurer of American Patriot PAC, Fabian was required to file
15 accurate reports of receipts and expenditures. See 2 U.S.C. § 434(b). Accordingly, it appears
16 that Fabian knowingly and willfully violated the Act when he filed the July 2004 report that
17 falsely identified the purported contributors as the source of \$25,000 in receipts, rather than SPI.

18 For the following reasons, however, we recommend that the Commission open a MUR,
19 dismiss the MUR as a matter of prosecutorial discretion, and caution Fabian for his violations of
20 the Act. See *Heckler v. Chaney*, 470 U.S. 821 (1985). Fabian is currently serving a nine-year
21 prison sentence and has filed for bankruptcy. In addition, the available information does not
22 indicate that any other person involved in the activity warrants pursuit. Finally, the activity in
23 question took place in 2004 and American Patriot PAC terminated in March 2006. Under these

circumstances, pursuing Fabian does not appear to be a prudent use of Commission resources. However, because Fabian's plea in the criminal proceeding did not include admissions of any campaign finance violations, we think that it would be appropriate for the Commission to caution Fabian for his apparent violations of 2 U.S.C. §§ 441b, 441f, and 434(b) by using corporate funds to make contributions in the name of another and misreporting.

III. RECOMMENDATIONS

1. Open a MUR.
2. Dismiss the MUR as a matter of prosecutorial discretion.
3. Approve the attached Factual and Legal Analysis.
4. Close the file.
5. Approve the appropriate letters, including a letter cautioning Alan B. Fabian.

Thomasenia P. Duncan
General Counsel

5/17/09
Date

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